

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.8248 OF 2005
IN
CRIMINAL REVISION APPLICATION NO.161 OF 2005

Charuhasa Finance &
Investment Pvt. Ltd. & Ors. .. Applicants.
Vs.
Mafatlal Finance Company
Ltd. & Ors. .. Respondents.

Mr.S.V.Divekar i/b M/s.Divekar & Co. for the
applicants.
Mr.S.V.Marwadi for respondent no.1.
Mr.U.V.Nikam A.P.P. for the State.

CORAM : D.B.BHOSALE, J.

DATED : 28TH JUNE, 2006

P.C.:

Heard learned counsel for the parties.

2. This Court in the revision has passed orders from time to time and the last order that was passed on 17th August, 2005 was carried to the Supreme Court. Paragraph 3 of the order dated 17th August, 2005 reads thus:

"3. My attention has been invited to order dated 20th May 2005 passed by this Court. The undertaking of the Counsel appearing for the applicants was recorded in the said order to the effect that by 24th May 2005 the Applicant No.2 will deposit a sum of Rs.10,00,000/- and he will deposit further sum of Rs.25,00,000/- on or before 30th June 2005. Ad-interim relief was granted in favour of the Applicants till 25th June 2005. On 8th July 2005 a statement was made that a sum of Rs.8,00,000/- will be deposited by the Applicants by demand

draft by 11th July 2005. A statement was also made that the balance amount of Rs.17,00,000/- will be deposited in the Trial Court within a period of 4 weeks and undertaking to that effect will be filed on or before 12th July 2005. The order dated 15th July 2005 records that undertaking has been filed by the Applicant No.2 in which the applicant no.2 had stated that he will deposit a sum of Rs.17,00,000/- in the Trial Court from the date of filing the undertaking i.e. 12th July 2005. Thus, a solemn undertaking was given to deposit the amount in the trial court on or before 9th August 2005. The learned Counsel for the applicants fairly stated that the applicants have not deposited any amount in compliance with the undertaking. There is also a breach of undertakings recorded in order dated 20th May 2005 and 7th June 2005. In view of the breach of undertaking committed by the Applicant No.2, the applicants are not entitled to any interim relief. Ad-interim relief granted earlier is vacated. The prayer for interim relief is rejected."

3. The matter was carried to the Supreme Court in the S.L.P., it was however dismissed by the order dated 19.9.2005. The order reads thus:

"Counsel for the petitioners states that the petitioners will approach the High Court and seek appropriate relief. In view of the undertaking given to the High Court, we are not inclined to interfere in this matter. However, it is open for the petitioners to move the High Court for appropriate relief."

4. It is against this backdrop the petitioners have once again made the prayer to stay the implementation, execution, effect and operation of the order dated 13.5.2005 passed in Criminal Appeal No.232/2003 as also order dated 30.8.2003 passed by the learned Magistrate. The applicant in addition to the averments made in the application has filed an

affidavit dated 27th June, 2006. Paragraph 5 thereof reads thus:

"5. I hereby agree and undertake to this Hon'ble Court that I shall pay the balance amount of Rs.17 lacs to Respondent No.1 in 5 equal monthly instalments of Rs.3.40 lacs each. The first of such instalment shall be paid by me on or before 31st of July 2006 and the remaining instalments shall be paid by me on or before the last day of each succeeding month upon the Respondent No.1 giving the undertaking as aforesaid."

5. Mr.Marwadi, learned counsel for the respondent-complainant states that he has no objection for showing indulgence as stated in the aforesaid paragraph 5 of the affidavit. However, such order may be made conditional. Keeping that in view and all the earlier orders passed by this Court I am satisfied that the following order shall meet the ends of justice:

. The applicant is allowed to make the payment of balance amount of Rs.17 lacs as stated in the aforesaid paragraph 5 of the affidavit. Any two defaults in making the payment as stated in the said paragraph shall lead to dismissal of the revision for non prosecution and in that case it will be open for the respondent-complainant to adopt such remedy as may be available in law. With these observations the application is disposed of.

(D.B.Bhosale, J.)